

changed more easily than a Charter of Fundamental Rights.

Some readers may wonder whether we have arrived at the position where judicial notice can be taken of the law of religious groups. In this connection it is important to remember that religious freedom is one of the fundamental rights to be provided for and that a provision such as that proposed above does not prevent a court hearing evidence concerning rules which are not otherwise available to it: cf (1957) 74 SALJ 313 at 330.

Sub-section (4) of the above proposal replaces the Government's sub-section 28(1) which HJ Fabricius SC, with respect correctly, points out is too wide. Courts exist for the settlement of *legal* disputes. In its note to its section 28 the Government explains that a provision is necessary to ensure that the jurisdiction of the courts is not ousted.

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## African Languages for Non-African Practitioners

It often occurs in proceedings that witnesses are African while all the court officials, except the interpreter, are non-African. For the past ten years during which I have had some contact with the conduct of court proceedings, I have noted with grave concern the extent to which justice is miscarried as a result of incorrect and/or imperfect translation of the evidence of African witnesses by interpreters.

This problem is so serious that, save for unopposed divorce matters where the evidence is, by and large, similar and, therefore, can easily be recited by interpreters, in virtually all trials that I have been involved in or in which I have been part of the audience there is bound to be some incorrect and/or imperfect translation. This is particularly disturbing when one considers that most of the witnesses that appear before our courts, especially in criminal matters, are African and give their evidence in African languages. It is pitiful to observe a witness being required to explain something that he/she is supposed to have said

when he/she never said it. On saying that he/she never said such a thing, the witness will be confronted with the record which, of course, will reflect the incorrect English version of the interpreter.

This state of affairs may have disastrous and far-reaching effects in that the incorrect and/or imperfect translation may relate to the very facts that are crucial for the determination of the case. The presiding officer's decision may, therefore, come nowhere near a just resolution of the issues between the parties. In the few cases in which the practitioner speaks the language of the witness, interjections by him/her (the practitioner) to a large extent, if not altogether, eliminate the possibility of such miscarriage of justice.

For justice not be "justice in the air", it is time that all practitioners who do not speak the African languages of the areas where they practise took lessons in such languages so that they themselves may be in a position to hear and understand the evidence of witnesses. A pass in an African language, preferably one spoken in the area where one intends practising, should be made compulsory for those who are still aspiring to be practitioners. As to whether such a pass should be at secondary or tertiary level is something that should be open to discussion. This suggestion should apply equally to persons who speak one or more African languages if they are going to practise in areas where African languages that they have no working knowledge of are predominantly spoken.

The implementation of the above suggestion may present difficulties in regions like the PWV where a number of African languages are spoken. These problems are not insurmountable and need to be discussed.

Something also needs to be done about the training of interpreters. Obviously a lot is lacking in the system presently followed in training them. In Transkei where I practise I am not aware of any formal programme of training interpreters. I do not know what the position is in South Africa but I venture to say that even if there is a programme, it does not overcome the problem under discussion. The nature of training or further training is something that should also be open to discussion.

I suggest that the bar and side-bar, whether jointly or separately, should discuss this issue at an appropriate level. Considerations of inconvenience to those practitioners or aspirant practitioners who do not speak the languages of the areas where they practise or intend practising should play a very minor, *if any*, role in the final determination of the matter. I trust that the concern of all practitioners is to strive for justice and not to sacrifice it at the altar of personal convenience.

This issue equally affects judges and magistrates as it affects practitioners. An illustrative example is the case of *S v Mpopo* 1978 (2) SA 424 (A) where the learned presiding judge made adverse remarks on the witness's demeanour basing them on his understanding of the Xhosa language when the witness was speaking seSotho. At the proposed discussions some attention should be given as to how the above proposals should affect judges and magistrates.

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### Note:

See also "Speaking in tongues - A Namibian experience" by Stephan du Toit SC in (1992) 5 *Consultus* 148 and "Court interpreting in South Africa" by AA Mahlangu in (1993) 6 *Consultus* 48. - Editor

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S van Staden

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